

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES INVESTOR PROTECTION
CORPORATION,

Plaintiff-Applicant,

v.

BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,

Defendant.

In re:

BERNARD L. MADOFF,

Debtor.

IRVING H. PICARD, Trustee for the
Substantively Consolidated SIPA Liquidation
of Bernard L. Madoff Investment Securities
LLC and the Chapter 7 Estate of Bernard L.
Madoff,

Plaintiff,

v.

NATIXIS, NATIXIS CORPORATE &
INVESTMENT BANK (f/k/a IXIS
CORPORATE & INVESTMENT BANK),
NATIXIS FINANCIAL PRODUCTS, INC.,
BLOOM ASSET HOLDINGS FUND, and
TENSYS LIMITED,

Defendants.

Adv. Pro. No. 08-01789 (CGM)

SIPA Liquidation

(Substantively Consolidated)

Adv. Pro. No. 10-05353 (CGM)

**STIPULATION AND ORDER TO DISMISS WITHOUT PREJUDICE
DEFENDANTS NATIXIS FINANCIAL PRODUCTS LLC AND BLOOM ASSET
HOLDINGS FUND AND FILE AN AMENDED COMPLAINT AGAINST
DEFENDANTS NATIXIS S.A. AND TENSYS LIMITED**

Irving H. Picard (the “Trustee”), as trustee for the substantively consolidated SIPA liquidation of the business of Bernard L. Madoff Investment Securities LLC, under the Securities Investor Protection Act, 15 U.S.C. §§ 78aaa–III, and the chapter 7 estate of Bernard L. Madoff,

and defendants Natixis S.A. (in its own capacity and as successor in interest to Natixis Corporate & Investment Bank and IXIS Corporate & Investment Bank), Natixis Financial Products LLC (as successor in interest to Natixis Financial Products Inc.) (“Natixis F.P.”), Bloom Asset Holdings Fund (“Bloom”), and Tensyr Limited (“Tensyr”) (collectively, the “Defendants” and, together with the Trustee, the “Parties”), by and through their respective undersigned counsel, hereby stipulate and agree as follows:

WHEREAS, on December 8, 2010, the Trustee commenced the above-captioned adversary proceeding against Defendants (the “Action”) to recover subsequent transfers allegedly received from, *inter alia*, Fairfield Sentry Limited and Groupement Financier Limited. *See Picard v. Natixis*, Adv. Pro. No. 10-05353 (Bankr. S.D.N.Y. Dec. 8, 2010), ECF No. 1;

WHEREAS, on November 22, 2016, the Bankruptcy Court issued a Memorandum Decision Regarding Claims to Recover Foreign Subsequent Transfers (the “Bankruptcy Court ET Decision”) dismissing all claims against Natixis S.A., Bloom, and Tensyr, as well as certain claims against Natixis F.P., for reasons related to extraterritoriality and international comity. *See Picard v. Bureau of Labor Ins. (SIPC v. BLMIS)*, Adv. Pro. No. 08-01789 (SMB), 2016 WL 6900689 (Bankr. S.D.N.Y. Nov. 22, 2016);

WHEREAS, on December 28, 2018, the Trustee filed a Motion for Leave to File Amended Complaint (the “Motion”) against the remaining Defendant, Natixis F.P. *See Picard v. Natixis*, Adv. Pro. No. 10-05353 (Bankr. S.D.N.Y. Dec. 28, 2018), ECF No. 169;

WHEREAS, on February 25, 2019, the United States Court of Appeals for the Second Circuit issued an order, *In re Picard*, 917 F.3d 85 (2d Cir. 2019) (the “ET and Comity Decision”), that, *inter alia*, vacated the Bankruptcy Court ET Decision;

WHEREAS, on March 28, 2019, the Trustee and Defendants Natixis S.A., Natixis F.P.,

and Bloom entered into a Stipulation and Order (the “March 2019 Stipulation”) agreeing to withdraw the pending Motion and stay the Action until sixty days after the Second Circuit’s issuance of the mandate in respect of the ET and Comity Decision. *See Picard v. Natixis*, Adv. Pro. No. 10-05353 (Bankr. S.D.N.Y. Mar. 28, 2019), ECF No. 181;

WHEREAS, on December 20, 2019, the Trustee sought direct appeals to the Second Circuit of the Bankruptcy Court’s memorandum decisions: (i) denying the Trustee’s motion for leave to file an amended complaint in one adversary proceeding, *Picard v. Citibank, N.A.*, 608 B.R. 181 (Bankr. S.D.N.Y. 2019), and (ii) granting, in part, the motion to dismiss the Trustee’s amended complaint in another adversary proceeding, *Picard v. Legacy Capital Ltd.*, 548 B.R. 13 (Bankr. S.D.N.Y. 2013) (together, the “Good Faith Appeals”);

WHEREAS, on July 1, 2020, the Parties withdrew the March 2019 Stipulation, and agreed to stay the Action until after the issuance of orders from the Second Circuit in the Good Faith Appeals. *See Picard v. Natixis*, Adv. Pro. No. 10-05353 (Bankr. S.D.N.Y. July 1, 2020), ECF No. 185;

WHEREAS, on August 30, 2021, the United States Court of Appeals for the Second Circuit decided the Good Faith Appeals. *See Picard v. Citibank, N.A. (In re BLMIS)*, 12 F.4th 171 (2d Cir. 2021), *cert. denied sub. nom Citibank, N.A. v. Picard*, 142 S. Ct. 1209 (2022); and

WHEREAS, the Parties have discussed the potential benefits to severing the claims in the Action.

IT IS HEREBY STIPULATED AND AGREED, by the Parties, and **SO ORDERED**, by the Court:

1. Defendants Natixis F.P. and Bloom are dismissed without prejudice from the Action and the Trustee will file a separate action (the “New Action”) against Natixis F.P. and

Bloom on or after January 10, 2023. The parties to the New Action will confer on and, subject to the Court's approval, agree to a briefing schedule governing Natixis F.P.'s and Bloom's respective responses to the complaint to be filed in the New Action, including the filing of one or more motions to dismiss such complaint.

2. The caption for the instant Action is amended to include only Natixis S.A. and Tensyr as defendants, consistent with the attached Exhibit A.

3. The Trustee will provide a proposed amended complaint to Defendants Natixis S.A. and Tensyr on or after January 10, 2023.

4. On or before 14 days after the Trustee provides a proposed amended complaint to Defendants Natixis S.A. and Tensyr, Defendants Natixis S.A. and Tensyr will inform the Trustee whether they will consent to the Trustee filing the proposed amended complaint.

5. If Defendants Natixis S.A. and Tensyr consent to the Trustee filing the proposed amended complaint, the Trustee will file the amended complaint 7 days after receiving consent from both Natixis S.A. and Tensyr, and:

- a. Natixis S.A. and Tensyr will answer, move, or otherwise respond to the amended complaint on or before 75 days after the filing of the amended complaint.
- b. The Trustee will file any opposition(s) to Natixis S.A. and/or Tensyr's motion(s), if any, on or before 60 days after any motion is filed.
- c. Natixis S.A. and/or Tensyr will file their reply brief(s), if any, on or before 45 days after any opposition is filed by the Trustee.

6. If Natixis S.A. and/or Tensyr do not consent to the Trustee filing the proposed amended complaint, the Trustee will file his motion for leave to amend the complaint on or before

30 days after the Trustee receives notice of a lack of consent, and:

- a. Defendants Natixis S.A. and/or Tensyr will file an opposition(s) to the Trustee's motion for leave to amend on or before 60 days after the Trustee files his motion.
- b. The Trustee will file his reply brief on or before 30 days after any opposition is filed by Defendants Natixis S.A. and/or Tensyr.

7. The Parties in this Action reserve all rights, claims, arguments, objections, and defenses they may have and, except as specifically provided herein, nothing referenced in this Stipulation and Order (including any consent by Defendants to the filing of a proposed amended complaint) shall impair, constitute a waiver of, or otherwise affect any such rights, claims, arguments, objections, and defenses, including, without limitation, challenges to personal jurisdiction or any other defense under Federal Rule of Civil Procedure 12(b).

8. The above deadlines granted by this Stipulation and Order are without prejudice to any Party seeking future extensions of time.

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Dated: January 9, 2023
New York, New York

By: /s/ Joanna F. Wasick

BAKER & HOSTETLER LLP

45 Rockefeller Plaza
New York, New York 10111
Telephone: (212) 589-4200
Facsimile: (212) 589-4201
David J. Sheehan
Email: dsheehan@bakerlaw.com
Joanna F. Wasick
Email: jwasick@bakerlaw.com
Carlos Ramos-Mrosovsky
Email: cramosmrosovsky@bakerlaw.com

*Attorneys for Irving H. Picard, Trustee for
the Substantively Consolidated SIPA
Liquidation of Bernard L. Madoff
Investment Securities LLC and the Chapter 7
Estate of Bernard L. Madoff*

By: /s/ Joseph Cioffi

DAVIS+GILBERT LLP

1675 Broadway
New York, New York 10019
Telephone: (212) 468-4800
Facsimile: (212) 468-4888
Joseph Cioffi
Email: jcioffi@dglaw.com
Bruce M. Ginsberg
Email: bginsberg@dglaw.com
H. Seiji Newman
Email: hsnewman@dglaw.com

*Attorneys for Defendants Natixis S.A.
(in its own capacity and as successor-
in-interest to IXIS Corporate &
Investment Bank), Natixis Financial
Products LLC (as successor-in-interest to
Natixis Financial Products, Inc.), and Bloom
Asset Holdings Fund*

By: /s/ David Y. Livshiz

**FRESHFIELDS BRUCKHAUS
DERINGER US LLP**

601 Lexington Avenue, 31st Floor

New York, New York 10022

Telephone: (212) 277-4000

Facsimile: (212) 277-4001

Timothy P. Harkness

Email: timothy.harkness@freshfields.com

David Y. Livshiz

Email: david.livshiz@freshfields.com

Attorneys for Defendant Tensyr Limited

Dated: January 10, 2023
Poughkeepsie, New York



/s/ Cecelia G. Morris

Hon. Cecelia G. Morris
U.S. Bankruptcy Judge